

Get Real With a Pre-Nup

For both secular and religious couples, a pre-nuptial contract is a viable option

Na'amat NEWS

Shiri and her husband have almost no assets to divide. Nevertheless, they recently signed an agreement that people more often associate with heiresses marrying poor husbands, or with wealthy couples. This is a pre-nuptial agreement, and in recent years it has become increasingly common in Israel, even among people living on a shoestring.

These are actually pre-divorce agreements, because the main purpose is to spell out the relationship between the couple in case they divorce. Attorney Edith Tytunovich from Na'amat's legal department, who specializes in such agreements, explains that the contract has as dual purpose: to prevent situations where women are refused a divorce and become *agunot* (women whose husbands refuse them a religious divorce, or *get*, and thus cannot remarry), and to determine the division of assets.

Of the hundreds of couples who have signed such agreements through Na'amat, many are motivated mainly by economic considerations — in cases where one partner owns more property than the other, or when they both have property or children from previous marriages.

But Tytunovich believes that more important than the clauses relating to division of assets are those that provide a mechanism for preventing a situation where a man will refuse to give his wife a *get*, thus causing her to become an *aguna*. "As long as there is no civil divorce, and a *get* requires the man's agreement, such agreement becomes a source of blackmail," says Tytunovich.

"Many couples do not succeed in ending their relationship because of this problem." This is also true of couples who marry abroad, including many immigrants from the former Soviet Union. If they want a divorce in Israel, they have to undergo the process of obtaining a *halachic get*, if both are Jews.

The meaning of being an *aguna*, in addition to the emotional suffering involved, is that the woman is not allowed, according to *halacha* (Jewish law), to have children by another man, because they will be considered *mamzerim* (children born of a mother *halachically* married to a man who is not the father of the children) for generations to come. A man, on the other hand, can go on with his life and have children with another woman, although he has to pay alimony to his legal wife.

The agreements prepared by Na'amat and other Jewish women's organizations, who have recently banded together to make the public more aware of pre-nups, operate on several planes. First, says Tytunovich, they solve the problem of the law, which determines that a division of assets takes place only after the divorce. Instead, the contract states that the division of assets is not dependent on agreement to divorce, but takes place the moment one side asks to terminate the marriage. Second, notes Tytunovich, the contracts use the rules of *halacha* to set up an automatic mechanism for the payment of alimony, with sanctions against a husband who refuses to give his wife a divorce. The sanctions threaten

the woman, too: A woman who is not willing to accept a *get* is fined by not receiving alimony.

"The idea is to discourage each partner from holding on to the other by force," explains Tytunovich. Without an agreement, a woman has to undergo a long and sometimes expensive process in the rabbinic courts in order to receive alimony, and the results are not certain. The *dayanim* (rabbinical court judges) take into account her standard of living during the marriage, her habits, the question of who has prior claim to the husband's support — his wife or his children, etc. There is no certainty as to the amount of money she will get, if any.

Many couples whom Tytunovich meets reject the idea of drawing up such a contract. "They are in love, and don't want to stop and think what will happen if they divorce," she says. "But it's dangerous to close one's eyes and say, 'It won't happen to me.' I'm forced to remind them that according to statistics, one out of every three couples gets divorced. And then, when they do go to a lawyer and tell him or her that they want a divorce, the lawyer suggests in any case that they reach an agreement, in order to avoid the foot-dragging and the runaround that will confront them in the rabbinical courts. And sometimes one or both of them do not agree."

For Tytunovich, it is important to emphasize that the agreements are not meant to encourage divorce. On the contrary, she recommends that the couples include a clause that requires them to turn to

counseling in case problems arise between them.

Shiri, a master's degree candidate, turned to Tytunovich for ideological reasons, as she put it. Neither she nor her boyfriend had property or money, but she knew about the attitude of the rabbinical establishment towards women. "I was disturbed by the thought that one day, God forbid, I would have to stand before the rabbi, and I would not be considered equal to my husband," she says. "It hurt my sense of justice."

When she suggested the idea of a contract to her boyfriend, she explained that for her it was a protest against the religious establishment, the same protest that prevented her from immersion in the *mikveh* before her marriage, despite the fact that she defines herself as a "believer." Her boyfriend had some reservations, but the next day they found themselves at the lawyer's office. "It's only a safety measure — his refusal to give me a *get* will harm him, and vice versa," she pointed out. "I find what happens in the rabbinical courts very unjust. If the woman has someone else, she gets nothing. If the man has 10 girlfriends, he gets everything."

Source: Ha'aretz Daily Newspaper